

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA  
AT BECKLEY

DUSTY R. TONEY,

Plaintiff,

v.

CIVIL ACTION NO. 5:04-0669

JO ANNE B. BARNHART,  
Commissioner of Social Security,

Defendant.

MEMORANDUM OPINION AND ORDER

By Standing Order entered nunc pro tunc May 13, 2002, and filed in this case on June 30, 2004, this action was referred to United States Magistrate Judge R. Clarke VanDervort for submission of proposed findings and recommendation. Magistrate Judge VanDervort submitted his proposed findings and recommendation on December 16, 2004. In that Proposed Findings and Recommendation, the magistrate judge recommended that this court 1) grant the defendant's motion for remand, 2) reverse or vacate the decision of the Commissioner, and 3) remand the claimant's case to the Commissioner pursuant to the fourth sentence of 42 U.S.C. § 405(g) for further proceedings as indicated in defendant's motion.

In accordance with the provisions of 28 U.S.C. § 636(b), the parties were allotted ten days, plus three mailing days, in which to file any objections to Magistrate Judge VanDervort's Findings

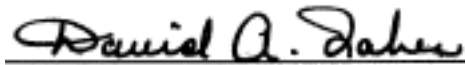
and Recommendation. No party has filed objections within the requisite period, and the failure of any party to file such objections constitutes a waiver of such party's right to a de novo review by this court. Snyder v. Ridenour, 889 F.2d 1363 (4th Cir. 1989); Thomas v. Arn, 474 U.S. 140 (1985).

Having reviewed the Proposed Findings and Recommendation filed by the magistrate judge, the court adopts the findings and recommendations contained therein. Accordingly, the court hereby **GRANTS** the defendant's motion for remand, **REVERSES** the decision of the Commissioner, and **REMANDS** the claimant's case to the Commissioner pursuant to the fourth sentence of 42 U.S.C. § 405(g) for further proceedings as indicated in defendant's motion.

The Clerk is directed to **REMOVE** this matter from the court's docket, and is further directed to forward a copy of this written opinion and order to counsel of record and to any unrepresented party.

IT IS SO ORDERED this 23rd day of June, 2005.

ENTER:

A handwritten signature in cursive script, reading "David A. Faber", is written over a horizontal line.

David A. Faber  
Chief Judge